



REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

SUCCESSION NO.104 OF 2000

IN THE MATTER OF THE ESTATE OF JUSTUS THUMBI WAITHERU.....DECEASED

AND

**IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION
INTESTATE BY:**

PETER MWANGI THUMBI.....PETITIONER/RESPONDENT

VRS

TERESIA WANJIKU THUMBI.....1ST OBJECTOR/APPLICANT

NANCY WAMUCHI THUMBI.....2ND OBJECTOR/APPLICANT

JUDGMENT

1. Justus Thumbi Waithera died intestate on 24th January, 2000. The grant of letters of administration were issued on 14th December, 2000 to Peter Mwangi Thumbi. Later on Teresia Wanjiku was made a joint administrator of the Estate.

2. According to the parties, the beneficiaries of the estate of the deceased were:

- a) Jane Wangeshi - 1st wife
- b) Teresia Wanjiku - 2nd wife
- c) Peter Mwangi - son
- d) Nancy Wamuchi - daughter
- e) Charles Kingori - son
- f) Alice Muthoni - daughter

3. Jane Wang'echi (1st wife) died shortly thereafter. Alice Muthoni also died but left – behind three children namely Immaculate Wangeshi, Justus Tumbu and Francis Wachiari. These children are currently not effectively under the custody of any person except the last born Francis Wachiuri who is under the care of Nancy Wamuchi Thumbi.

4. The parties were agreeable that the following properties constituted the assets of the estate of the deceased which are subject to distribution:-

- a) Ndivisi/Muchi/2281 (0.2 ha.)
- b) Ndivisi/Khalumuni/1293 (0.1 ha.)
- c) Mahiga/Ugaciku/424 (0.97 ha.)
- d) Laikipia Plot No.888 – (Laikipia Investments Ltd)
- e) Thegenge/Kihora/588 (0.81 ha.)
- f) Shares:
 - i) 984 shares in Barclays Bank of Kenya Ltd
 - ii) 150 shares in Kenya Commercial Bank Ltd
 - iii) 700 shares in Standard Chartered Bank Ltd
 - iv) 500 shares in Kenya Airways

5. Although there had been income from the estate and other assets like Makindi Maholi Jumapili Co-operative Society, it emerged at the hearing that such income had been applied and used in various ways by both the administrators and Nancy Wamuchii Thumbi. Accordingly, there is nothing out of any such income that is available for distribution.

6. At the hearing, it also transpired that although the administrators had been granted letters of administration, they had not collected or properly ascertained the assets belonging to the estate. This is so notwithstanding that this Cause has been in these Courts for over a decade now. I say so because, Peter Mwangi Thumbi, the 1st Petitioner/Administrator told the Court that the property known as Laikipia Plot No.888 (Laikipia Investments Ltd) did not have a title neither did he know where it was situated. Despite having administered the estate for now ten (10) years, he could not tell where the property was or its size. Further, he was not able to give with clarity the exact number of shares the estate held in Barclays Bank, KCB and Standard Banks. The only conclusion the court could make was that there was sheer dereliction of duty. Both the administrators and Nancy Wamuchi have only hitherto been concerned with the little income that is derived from some rental houses in Webuye.

7. Be that as it may, I have considered the evidence tendered. I have considered that the 2nd Petitioner is of advanced age and have been living in one of the houses erected on Ndivisi/Muchi/2281 since the demise of the deceased. She moved out of the house they were living with the deceased and that house has been in the occupation of Charles Kingori.

8. I have also considered that most if not all the rental houses belonging to the estate has been left in ruins, have not been renovated and remain in a desolate state although the income therefrom has been used for the upkeep of the 2nd Petitioner.

9. There was an attempt to show that since Nancy Wamuchi had been married and has children who are with their father, she should not be considered for the Webuye properties. I do not think there is anything both in the Constitution of Kenya as well as the Law of Succession Act which militate towards such a conclusion. However, the fact that she is married and that her children are well taken care of by her husband is a factor the Court has to consider under Sections 26 through 29 of the Law of Succession Act when effecting distribution.

10. Accordingly, having considered the evidence on record by way of Affidavits and oral testimonies, and considering the circumstances of each beneficiary, I distribute the estate as follows:-

a) Ndivisi/Khalumuli/1293

i) Charles Kingori Thumbi - 0.5

ii) Peter Mwangi Thumbi)

Teresia Wanjiku Thumbi (life interest only)) -0.5

b) Ndivisi/Muchi/2281 - 0.2 ha

Nancy Wamuchi Thumbi on her own behalf

and trust for Immaculate Wangeshi, Justus Thumbi and

Francis Wachiari whole

c) Mahiga/Ugaciku/424

i) Charles Kingori Thumbi)

ii) Teresia Wanjiku Thumbi (life interest only)) whole

d) Thegenge/Kihora/588

Peter Mwangi Thumbi whole

e) Laikipia Plot No.888

i) Peter Mwangi Thumbi)

ii) Nancy Wamuchi Thumbi) In equal shares

f) 150 Shares KCB

Peter Mwangi Thumbi

g) 700 Shares Standard Chartered Bank Ltd

Charles Kingori Thumbi

h) 984 shares in Barclays Bank of Kenya Ltd

Nancy Wamuchi thumbi

I) 500 shares in Kenya Airways Ltd

Nancy Wamuchi Thumbi in Trust for Immaculate Wangeci, Justus Thumbi and Francis Wachiari

11. For the avoidance of any doubt, all such income for the time being emanating from rental houses erected on Ndivisi/Muchi/2281 shall be applied for the upkeep of Teresia Wanjiku Thumbi for the rest of her life.

It is so decreed.

DATED and DELIVERED at BUNGOMA this 26th day of May, 2014.

A. MABEYA

JUDGE